IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/12/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

H.C.P.No.1836 of 2002

N.Kumaresan ... Petitioner

-Vs-

1.State, rep.by Secretary to Government
Prohibition and Excise Department
Secretariat, Chennai – 600 009.

2.The District Collector & District
Magistrate, Kancheepuram District,
Kancheepuram. ... Respondents

Petition under Article 226 of the Constitution of India praying for the issue of a writ of Habeas Corpus, directing the respondents to produce the detenu Kasi, S/o Kutti, who is now detained in Central Prison, Vellore in pursuance of the detention order passed by the 2nd respondent on 24.07.2002 in BDFGIS No.172/2002, call for the records, set aside the order and direct the release of the detenu Kasi, S/o Kutti, and set him at liberty forthwith.

!For Petitioner : Mr.S.Swamidoss Manokaran

^For Respondents : Mr.A.Navaneethakrishnan
Additional Public Prosecutor

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

Challenge is to the order dated 24.7.2002 passed by the second respondent, District Collector and District Magistrate, Kancheepuram, ordering the preventive detention of one Kasi, S/o Kutti on the ground that he is a bootlegger and that his continued liberty would hamper the public order.

2. Learned counsel for the petitioner, Mr.Swamidoss Manokaran, raises only two points assailing the correctness of the order as well as the detention. Firstly, he points out that the detention seems to have been ordered casually, even without reference to the existing facts. For this, the learned counsel takes us through the grounds of detention, and more

particularly ground 5(ii), wherein the detaining authority has stated as follows:-

"He was ordered to be remanded till 26.07.2002. He has not filed any bail application so far in the court. But there is a possibility of his filing of a bail application and being enlarged on bail by the criminal court. I am also aware that in such cases, bail is granted after lapse of some time and if Thiru.Kasi is let to remain at large, he is likely to indulge in such activities in future....."

3. This order seems to have been passed on 24.07.2002, whereas according to the learned counsel the bail application was actually filed much before that. Learned counsel points out that a bail application came to be filed by the detenu on 18.7.2002, on which date itself a copy of the same was given to the Public Prosecutor and the matter was fixed on 23.7.2002, on which date it was the State which took the adjournment. It was ultimately posted on 30.7.2002 and finally on 6.8.2002. From this, the learned counsel points out that the detaining authority, as also the sponsoring authority should have been in the know of the facts and should have acted on the correct facts. The making of a statement that no bail application had been filed, would suggest that the authority concerned had not applied its mind properly.

4. However, the learned Additional Public Prosecutor submits that though it is true that a statement has been made that the bail application had not so far been filed till the passing of the detention order, it could have been due to the fact that the detaining authority was not in the know of the matter and that the Public Prosecutor, or as the case may be, the sponsoring authority had not forwarded the bail application to the detaining authority. At any rate, the learned Additional Public Prosecutor points out that what was expressed was that the bail application was not filed and yet an apprehension was expressed that the bail application was likely to be filed, which apprehension also proved to be truthful. Therefore, the learned Additional Public Prosecutor says that there is no prejudice caused to the detenu at all. He further submits that a bail application which is rejected need not even be put before the detaining authority as that would not be necessary as the same was an insignificant document.

5. We are not on the significance or insignificance of the document as much on the depiction of correct facts. Ordinarily, it should have been known to the detaining authority as to whether a bail application was filed or not. One of us (V.S.SIRPURKAR, J.) had already taken a view that a service on the Public Prosecutor would mean the service on the State. Though a District Magistrate is an entirely different entity, we ordinarily expect the District Magistrate or atleast the sponsoring authority to be aware of the fact that the bail application was filed as early as on 18.7.2002 and that the Public Prosecutor himself had asked the time and that it was fixed on 23.7.2002, a day earlier to the order of detention. The learned Public Prosecutor also informs that the sponsoring authority should not have mentioned even this fact of bail application. It is clear that the concerned authority did not bother to go into the contents of the bail application, in which the detenu must have abjured his guilt and must have claimed innocence even in respect of the

ground case. Though it is true that all the bail applications which are ultimately rejected need not be put before the detaining authority and their copy need not be supplied to the detenu later on, it is unthinkable that the detaining authority does not even take note of that fact and on the other hand makes a completely incorrect factual statement that no bail application was filed till the order was passed. This suggests the casual approach on the part of the detaining authority. We are, therefore, convinced that this incorrect statement depicts the casual approach with which the matters were dealt with, firstly by the sponsoring authority and secondly by the detaining authority. In that view, the detention order itself would be bad as it was passed casually and on the basis of incorrect statements made in the grounds. However, the matter does not stop here.

6. Learned counsel for the petitioner also submits that there are as many as eight adverse cases pointed out against the detenu and in all the cases, he is shown to have been convicted. Learned counsel then takes us to pages 13,34 and 46, which are few of the orders where the petitioner is shown to have been convicted. It is, therefore, clear that the detaining authority has relied upon these orders. The learned counsel further points out that there are some English portions in these orders, which suggest that the detenu had pleaded guilty and was fined for that purpose. Unfortunately, the portion regarding the plea of guilty and the conviction is in English. In our opinion, the detenu was entitled to know as to whether in reality he was convicted on account of his pleading guilty. For that, the detenu had claimed that he was an illiterate person. At least, he did not know and understand English. Though the representation is made in English language, it is obvious that the representation is made on his behalf by somebody else. Therefore, the plea raised by the learned Additional Public Prosecutor that in this case the representation itself was made in English, cannot be considered. In our opinion, the detenu who has pleaded the ignorance of English language was bound to be supplied the translation of the English portions in page 13,34 and 46. In one of the pages, the proforma is in English. Even that proforma was bound to be translated, as it would have given the accused a confidence that he was in reality convicted and it was he who was convicted, on the basis of his plea of guilt. That not having been done, the further detention also suffers from a defect.

7. In that view, the writ petition would have to be allowed and it is hereby allowed. The order of detention dated 24.7.2002 set aside and the detenu Kasi, S/o Kutti, is directed to be released forthwith unless he is required in connection with any case.

Index : Yes
Internet : Yes
kst.

To:

1.The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St.George,Chennai.

2.The District Magistrate and District Collector, Kancheepuram District, Kancheepuram.

3.The Superintendent, Central Prison, Vellore.

4.he Joint Secretary to Government, State of Tamilnadu, Public (Law and Order), Fort St.George, Chennai-9.

5.The Public Prosecutor, High Court, Chennai-104.